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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/684,623	10/14/2003	Christopher Niezrecki	5853-319	3764
30448	7590	07/20/2004	EXAMINER	
AKERMAN SENTERFITT P.O. BOX 3188 WEST PALM BEACH, FL 33402-3188				LOBO, IAN J
		ART UNIT		PAPER NUMBER
		3662		

DATE MAILED: 07/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/684,623	NIEZRECKI ET AL.
	Examiner	Art Unit
	Ian J. Lobo	3662

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 06 May 2004.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,4-8,10-15 and 17-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 1,4-8,10-12 and 26-28 is/are allowed.
- 6) Claim(s) 13-15 and 17-25 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claims 18, 19 and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is no antecedent language in claim 15 for "creature" as claimed in claims 19 and 20.

With respect to claim 18, the last paragraph claims "responsive to a detection" of a creature. However, none of the prior steps actually "detect" the creature but merely claim "indicate a presence" of a creature. Thus, this discrepancy is confusing.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 13-15 and 17 and 19-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over the patent to Hall et al ('849).

With respect to claim 13, Hall et al discloses a watercraft (1) that includes a passive transducer (14, 15, 16, 17) and a signal processor (67). With respect to claim 15, Hall et al discloses a method for identifying the presence of a "cetacean such as a dolphin or whale", the method includes receiving at least one vibrational wave,

transforming the vibrational wave to a signal, processing the signal to indicate the presence of a dolphin or whale and providing a warning, using speakers, responsive to the detection.

The difference between claims 13 and 15 and Hall et al is the claim is specific to indicating the presence of a "manatee" whereas Hall et al indicates the presence of "cetaceans such as dolphins or whales". In as much as a manatee falls under the definition of a cetacean, it would thus, be obvious to one of ordinary skill in the art to utilize the Hall et al system to identify the presence of a manatee as well as a dolphin or whale. Claims 13 and 15 are so rejected.

With respect to claim 14, Hall et al further reads upon the claimed structure since a watercraft that is stationary may be, by definition, considered a "buoy". Note that Hall et al includes an indicator (57).

With respect to claim 17, speakers 57 read upon the audio signal.

With respect to claims 19 and 20, it would appear to be an obvious expedient that the system disclosed by Hall et al would measure a number of true and false occurrences of a specific creature since in effect, that is the reason for the tracking system. Claims 19 and 20 do not claim a patentable step over the method disclosed in Hall et al.

With respect to claim 22, see col. 7, line 25.

With respect to claims 21 and 23-25, see col. 7, lines 23-62.

Allowable Subject Matter

4. Claims 1, 4-8, 10-12 and 26-28 are allowed.

5. Claim 18 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

Response to Arguments

6. Applicant's arguments with respect to claims 13-15, 17 and 19-25 have been considered but are moot in view of the new ground(s) of rejection.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ian J. Lobo whose telephone number is (703) 306-4161. The examiner can normally be reached on Monday - Friday, 6:30 - 3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas H. Tarca can be reached on (703) 306-4171. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Ian J. Lobo
Primary Examiner
Art Unit 3662

ijl